IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15584 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DAYAGIRI @ MUKESH HARIGIRI GOSWAMI

Versus

DISTRICT MAGISTRATE,NAVSARI

Appearance:

1. Special Civil Application No. 15584 of 2004

MR BC DAVE for Petitioner No. 1

MR PP KASVALA for Petitioner No. 1

MRS HANSA B PUNANI AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 24/01/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the

petitioner challenging his detention in pursuance of the order passed against him by District Magistrate, Navsari, on 30th of June, 2004, in exercise of powers conferred upon him under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as bootlegger from 6th of July, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration the fact that the crime came to be registered against the petitioner at Jalalpor Police Station on 21st of March, 2004 under the Bombay Prohibition Act, whereby the petitioner was found transporting huge bulk of foreign liquor. The detaining authority considered exhaustively and thoroughly the investigation papers in the above said criminal case registered against the petitioner. After going through the investigating papers, the detaining authority reached to subjective satisfaction that the petitioner was engaged in storing, selling and transporting foreign liquor, and the said activity of the petitioner was illegal, adversely affecting the public health and was prejudicial to the maintenance of public order. After considering other remedies which might be available against the petitioner, the detaining authority came to the conclusion that the illegal anti-social activities of the petitioner was required to be prevented forthwith, and for that there was no other alternative except to detain the petitioner under the PASA Act. The detaining authority therefore passed the order of detention of the petitioner which is under challenge in this petition.

3. Learned Advocate Mr.B.C.Dave for the petitioner and learned AGP Mrs.H.B.Punani for the respondents were heard at length.

4. Out of various grounds urged on behalf of the petitioner and opposed and controverted by learned AGP, it appears that this petition can be examined and disposed of only on the issue that whether there was sufficient material placed before the detaining authority to come to the conclusion that by the activity of the petitioner the public order was disturbed and the public health was adversely affected.

5. To reach to the subjective satisfaction that bootlegging activities of the petitioner were prejudicial to the maintenance of public order and public health, there must be cogent material before the detaining authority indicating that the activities of the detenu

directly or indirectly is causing or is likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or the public health. The detaining authority while going though this exercise, has to draw a line between "breach of law and order" and "breach of public order". Now referring to the facts of the present case, the detaining authority took into consideration the solitary crime registered against the petitioner under Bombay Prohibition Act to reach to the subjective satisfaction that the activities of the petitioner was prejudicial to the maintenance of public order and public health. Going through the investigation papers as placed on record, it is clear that the case is registered against the detenu on the ground that the petitioner was dealing in foreign liquor. The fact of registration of crime against the petitioner under the Bombay Prohibition Act by itself cannot be branded as bootlegging activities, disturbing the public order and the public health. Therefore, since nothing has been disclosed through the Investigating papers of the said crime registered against the petitioner, surely, the act constituting the offence cannot be said to have affected the even tempo of the life of the community. At the most, the facts constitute the offence registered against the petitioner may be termed as breach of law and order for which he may be tried and even may be punished if found guilty, but the mere fact of registration of crime under the Bombay Prohibition Act, especially a solitary crime in this case, cannot lead to an inference that the activities of the petitioner were disturbing the public order or the public health.

6. The facts of the present case are squarely covered by a decision of the Division Bench of this Court in the matter of ASHOKBHAI JIVRAJ @ JIVABHAI SOLANKI vs. POLICE COMMISSIONER, SURAT and Ors. as reported in 2000 (1) GLH 393. In this view of the matter, the subjective satisfaction arrived at by the detaining authority in respect of disturbance of public order by the alleged activities of the petitioner cannot be said to be legal, valid and in accordance with law. The order under challenge, therefore, is required to be quashed and set aside on this ground alone.

7. In the result, the petition is allowed. The order passed by District Magistrate, Navsari, on 30 of June, 2004, against the petitioner in exercise of powers under Section 3(2) of the PASA Act is hereby quashed and set aside. The petitioner - Dayagiri @ Mukesh Harigiri Goswami is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any

other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair